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U. S. COURTS

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Attorney for Land View Fertilizer, Inc.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:	)	
	)	CASE NO. 96-02095
	)	
HIPWELL, TERRY	)	LAND VIEW FERTILIZER'S
	)	MEMORANDUM IN SUPPORT OF
Debtor.	)	MOTION FOR RELIEF FROM
	)	AUTOMATIC STAY

COMES NOW Land View Fertilizer, Inc. ("Land View"), a secured creditor of the above-named debtor, by and through its counsel of record, the law firm of White, Peterson, Pruss, Morrow & Gigray, P.A., and hereby submits its Memorandum in Support of its Motion for Relief from Automatic Stay in the above-entitled matter.

LAND VIEW FERTILIZER'S MEMORANDUM IN SUPPORT OF MOTION FOR  
RELIEF FROM AUTOMATIC STAY - 1

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*I. Land View's Motion for Relief from Automatic Stay Should be Granted.*

On November 18, 1998, Land View filed a Motion for Relief from Automatic Stay in the above-entitled matter. A ruling in the form of a written order issued by the Honorable Gerald L. Weston, Idaho District Judge, precipitated Land View's motion. (*Land View Fertilizer, Inc., v. The Amalgamated Sugar Company LLC*, Canyon County Case No. CV 98-02828). In that matter, Judge Weston initiated a stay "until such time as the United States Bankruptcy Court for the District of Idaho lifts the automatic stay . . . ." (*See*, a true and correct copy of the district court order attached to the Affidavit of Sam Johnson as Exhibit "A", p.3). Land View sued Amalgamated in state court for breach of contract. (*See*, a true and correct copy of the complaint appended to the Affidavit of Richard C. Boardman as Exhibit "A").

On last Friday, December 4, 1998, Amalgamated Sugar lodged an objection to the granting of Land View's Motion for Relief from Automatic Stay. Neither debtor Terry Hipwell, nor any other party has filed an objection to Land View's motion.

Land View is entitled to relief from the automatic stay. In fact, this court has already determined Mr. Hipwell has no interest or equity in the relevant property by virtue of denying his debtor's motion for turnover of the same to the bankruptcy estate, filed pursuant to 11 U.S.C. § 542, and by acknowledging Amalgamated's right to a setoff under 11 U.S.C. § 553. (*See*, Memorandum of Decision appended to the Affidavit of Richard C. Boardman as Exhibit "C."). Without a showing that the debtor


has some interest in the property at issue, relief from the automatic stay is warranted under 11 U. S. C. § 362(c)(1) and (d)(1)(2).

Moreover, the action brought by Land View against Amalgamated involves a dispute over the interpretation of a contract entered into in Idaho and governed by the law of Idaho; Land View seeks monetary damages arising from Amalgamated's alleged breach of contract, but cares not whether any award actually comes from the amount offset by Amalgamated or from some of Amalgamated's other assets. For this reason, as well, the state court proceeding does not invoke the property of Mr. Hipwell's bankruptcy estate.

Finally, Land View respectfully submits that the issue of *res judicata* is not properly before this court at this time.

DATED this 8 day of December, 1998.

WHITE, PETERSON, PRUSS,  
MORROW & GIGRAY, P.A.

By   
D. Samuel Johnson  
Attorneys for Land View Fertilizer, Inc.

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing LAND VIEW FERTILIZER'S MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY was served upon the following:

Office of the U.S. Trustee  
Post Office Box 110  
Boise, ID 83701

☐ Mailed  
☒ Faxed  
☐ Hand delivered

Howard R. Foley  
FOLEY & FREEMAN  
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Ronald D. Schoen  
Standing Chapter 12 Trustee  
P. O. Box 216  
Payette, ID 83661

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Richard C. Boardman  
PENLAND MUNTHE BOARDMAN  
Post Office Box 199  
Boise, ID 83701

☐ Mailed  
☒ Faxed  
☐ Hand delivered

this 8 day of December, 1998.

  
D. Samuel Johnson

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LAND VIEW FERTILIZER'S MEMORANDUM IN SUPPORT OF MOTION FOR  
RELIEF FROM AUTOMATIC STAY - 4